

Testimony on Election Day Voter Registration

U.S. House Administration Sub-Committee on Elections

Miles Rapoport, President, Demos: A Network of Ideas and Action

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Thank you, Chairwoman Lofgren, and members of the Subcommittee on Elections of The Committee on House Administration, for inviting me to testify at today's Oversight Hearing on "Election Day Registration and Provisional Voting."

Introduction: My History and Current Work on this Issue

Currently, I serve as President of Demos: A Network for Ideas and Action. Demos is a non-partisan public policy center in New York city, founded in 2000, whose work has focused on expanding democratic participation and lowering the barriers that exist to that participation since 2001. Since the very beginning of our work, we have seen Election Day Registration as one of the most important steps that could be taken in this regard; over time our belief in its efficacy has only strengthened. We are appreciative of Representative Ellison's efforts on this issue, and we are very encouraged that the Elections Sub-committee is taking up this issue this morning.

In fact, I have believed in and worked for EDR for a far longer time. I served in the Connecticut legislature for 10 years, from 1985-1994. During this time, I served on the Government Administration and Elections Committee, chairing the Committee in 1993

and 1994. One of the very first bills I submitted, in 1985, was Election Day Registration. And while the bill didn't pass, Connecticut has taken several steps to come closer to EDR, lowering its voter registration deadline from 29 days before an election, to 14 days, and now to seven days. A bill to enact EDR was passed by the Connecticut legislature in 2003, but was vetoed by then-Governor John Rowland.

From 1995-1998, I also served as Secretary of the State of Connecticut. I continued to believe that EDR would be an important reform, and that implementation of such a law would be achievable with great benefit to the citizens, with minimal administrative difficulty, and without any increase in voter fraud. I believe that today, and am delighted that this committee is discussing EDR.

Brief History of Voter Registration in the United States¹

Although contemporary Americans assume advance voter registration to be the norm, most states did not require voter registration prior to the 1870s.² As the electorate expanded due to immigration and the enfranchisement of former slaves after the Civil War, so too did calls for stricter controls on the voting process. The majority of states adopted registration requirements between the 1870s and World War I,³ and by 1929 all but three states required voters to register prior to casting a ballot.⁴

¹ Portions of this testimony are adapted from a forthcoming chapter on Election Day Registration appearing in the 2008 Election Handbook of the American Bar Association written by Steven Carbo and Brenda Wright of Demos.

² Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000).

³ *Id.*

⁴ Frances Fox Piven and Richard A. Cloward, *Why Americans Don't Vote* (New York: Pantheon, 1988).

Noted historian Alexander Keyssar has described the mixed motives behind the move to pre-election registration:

“[r]egistration laws...emerged in the nineteenth century as a means of keeping track of voters and preventing fraud; they also served – and often were intended to serve – as a means of keeping African American, working-class, immigrant, and poor voters from the polls.”⁵

While legislative choices about voter registration were likely shaped by a combination of factors – partisan aims, class bias, racial and ethnic prejudice, machine politics, and genuine concern about the electoral process – there is widespread agreement that the imposition of pre-Election Day registration requirements contributed to substantial reductions in voter participation and turnout among eligible voters in the U.S.⁶ Election Day Registration is a tool to significantly increase voter turnout while maintaining efficient and secure elections.

Benefits of Election Day Registration

Principal Benefit: Expanded Participation

A fundamental premise of our work at Demos, and a fundamental premise of our democratic system, is that we ought to encourage the widest possible participation in our voting process. It is a matter of broad and deep concern – among all of us concerned

⁵ Keyssar, at 312.

⁶ Keyssar; Piven & Cloward.

with our public life in America – that voter turnout has, over the last thirty years, dropped precipitously and remained relatively low. In particular, we have seen exceptionally low voting among young people, low-income people, and those Americans who move frequently. While there are many reasons for this, evidence is clear that making the process less daunting and more user-friendly will make a difference in turnout rates.

The private sector understands this. When I was young, I got my paycheck on Friday afternoon, and raced to the bank across the street, waiting in line for 45 minutes with all the other people who knew if you didn't get your check cashed on Friday, you wouldn't have any money over the weekend. I tell this to my son, who is here, and he laughs. Banks understood that making banking functions accessible to people through ATMs 24 hours a day, seven days a week would increase their usage. No self-respecting bank would do it any other way. Yet in encouraging people to vote, we require them not just to stand in line, but to pre-register, often one month in advance.

But not only logic argues for EDR. Objective research has repeatedly demonstrated EDR's potential to increase voter turnout as well. In fact, a typical summary of the social science literature states, "[t]he evidence on whether EDR augments the electorate is remarkably clear and consistent. Studies finding positive and significant turnout impacts are too numerous to list."⁷ EDR states as a group generally have an average voter turnout rate that is 10-12 percentage points higher than non-EDR states.⁸ This was most recently

⁷ Stephen Knack and James White, "Election-Day Registration and Turnout Inequality," *Political Behavior*, 22(1); 29-44 (2000).

⁸ Demos: A Network for Ideas & Action, *Voters Win With Election Day Registration: A Snapshot of Election 2006* (Winter 2007), available at <http://www.demos.org/pub1280.cfm>.

demonstrated in the November 2006 election, in which the now-seven EDR states had an average turnout rate that was 10 percentage points higher than non-EDR states.⁹ Academic studies have concluded that a significant part of this difference is *directly* attributable to EDR, *with the elimination of registration deadlines increasing turnout by 3 to 6 percentage points* depending on the states included and the research methods used.¹⁰

Over the past five years, Demos has commissioned academic experts to conduct studies on the projected impact of EDR on turnout if adopted in California, New York, Iowa, and North Carolina. The results have been consistent. A 2002 report by Professors Michael Alvarez of Cal Tech, and Stephen Ansolabehere of MIT found that California would likely experience a 9 percentage point increase in voter participation if EDR were adopted.¹¹ Subsequent studies have predicted a 4.9 percentage point increase in Iowa¹² and a 5.4 percentage point increase in North Carolina.¹³ In all states, projected gains are expected to be higher for historically marginalized populations. For example, the adoption of EDR in New York is expected to increase turnout 12.3 points among 18-25

⁹ *Id.*

¹⁰ For example, see Stephen Knack, "Election Day Registration: The Second Wave," *American Politics Quarterly* 29(1), 65-78 (2001); Knack & White 2000; Craig L. Brians & Bernard Grofman, "Election Day Registration's Effect on U.S. Voter Turnout," *Soc. Sci. Q.* 82(1); 171-83 (March 2001); Mark J. Fenster, "The Impact of Allowing Day or Registration Voting on Turnout in U.S. Elections from 1960 to 1992," *American Politics Quarterly* 22(1)(1994): 74-87.

¹¹ R. Michael Alvarez and Stephen Ansolabehere, *California Votes: The Promise of Election Day Registration*, Demos: A Network for Ideas & Action (2002), available at http://www.demos.org/pubs/california_votes.pdf.

¹² R. Michael Alvarez and Jonathan Nagler, *Election Day Registration in Iowa*, Demos: A Network for Ideas & Action (2007), available at <http://www.demos.org/pub1370.cfm>.

¹³ R. Michael Alvarez and Jonathan Nagler, *Same Day Voter Registration in North Carolina*, Demos: A Network for Ideas & Action (2007), available at http://www.demos.org/pubs/north_carolina.pdf.

year olds, 9.8 points among those with a grade school education or less, 11 points among Latinos, and 8.7 points among African Americans.¹⁴

Corollary Benefits of Election Day Registration

1. EDR Greatly Reduces Problems with Provisional Ballots

After millions of citizens were denied their right to vote in the 2000 presidential election,¹⁵ Congress included in the Help America Vote Act of 2002 (HAVA) a requirement that all states offer provisional ballots to individuals who believe they are registered to vote but whose names do not appear on the voter list at their polling place. Such ballots are counted if election officials subsequently determine that the individual was a legitimate voter under state law.¹⁶ While adoption of provisional balloting is a step forward, it has also created significant problems. Unfortunately, HAVA's vague language has allowed states to adopt unnecessarily stringent standards for deciding when a provisional ballot would be counted. One of the most indefensible of such standards is a rule currently in effect in at least 30 states in which a provisional ballot cast outside the voter's precinct will automatically be rejected, even if the voter is in the correct

¹⁴ R. Michael Alvarez, Jonathan Nagler, and Catherine H. Wilson, *Making Voting Easier: Election Day Registration in New York*, Demos: A Network for Ideas & Action (2004), available at <http://www.demos.org/pub198.cfm>.

¹⁵ It has been estimated that between 1.5 and 3 million votes were lost in the 2000 election because of registration problems alone, CalTech/MIT Voting Technology Project, *Voting: What Is, What Could Be* (July 2001.)

¹⁶ Voters can be omitted from voter lists for many reasons. Voters can move and not re-register properly or re-register after the cut-off date. Their names can be purged from the list, properly or improperly. All too frequently, simple administrative errors in data entry such as misspelling a name or transposing numbers in an address can prevent a voter from being on the list.

jurisdiction and eligible to vote in the races on the ballot.¹⁷ A Demos study released before the 2004 election, entitled *Placebo Ballots*, was among the first to raise concerns about provisional balloting.¹⁸ Our concerns were well-founded. In 2004, over one in three of the two million provisional ballots cast was rejected. Thirteen states each rejected over 10,000 provisional ballots; 23 states each counted less than 50 percent of provisional ballots cast.¹⁹ In many states, the “fail-safe” had failed.

Provisional balloting problems were not confined to their nationwide debut in the 2004 election. While comprehensive data on the casting and counting of provisional ballots in the 2006 election is not yet available, substantial evidence does exist of numerous problems. The Election Incident Reporting System (EIRS), an innovative, web-based software system, captured almost 18,000 reports of election problems received and logged in by volunteers staffing a national, toll-free hotline for voter problems on November 6-7, 2006. In a recent report, Demos subsequently analyzed 520 EIRS provisional balloting incident reports (450 described actual problems) and reviewed related media reports.²⁰ What we found is cause for national concern. Many voter registration lists in use on Election Day 2006 were riddled with errors. Poll workers and election officials were often confused about the proper application of provisional ballots two election cycles after HAVA went into effect. Among our findings:

¹⁷ See Electionline.org, “Provisional Ballot Verification (Updated 8/28/2007)”, available at <http://www.electionline.org/Default.aspx?tabid=1113>.

¹⁸ Ari Z. Weisbard, *Placebo Ballots: Will ‘Fail-Safe’ Provisional Voting Fail?*, Demos: A Network for Ideas & Action (October 2004), available at <http://www.demos.org/pub296.cfm>.

¹⁹ Kimball W. Brace and Michael P. McDonald, *2004 Election Day Survey*, U.S. Election Assistance Commission, 2005), available at http://www.eac.gov/election_survey_2004/toc.htm.

²⁰ Scott Novakowski, *A Fallible ‘Fail-Safe’: An Analysis of Provisional Ballot Problems in the 2006 Election*, Demos: A Network for Ideas & Action, (forthcoming), available soon at <http://www.demos.org>.

- Over one-third of problems involved voters being denied a provisional ballot when they were likely entitled to one, or individuals being required to cast a provisional ballot when they should have voted with a regular ballot.
- Almost 40 percent of the incidents involved problems with voter lists and other breakdowns in election administration occurring prior to Election Day.
- Fifteen percent of incidents involved poll workers either requiring voters to cast provisional ballots even though they had provided proper ID, requesting ID unnecessarily or, in the case of voters who genuinely lacked the appropriate ID, failing to inform such voters what steps they need to take to make their vote count.

Provisional ballots are clearly an unreliable remedy for voter problems on Election Day.

They also place an extra burden on election workers trying to determine the validity of such ballots in the days and weeks after the election. And one can easily imagine a weeks-long process challenging the validity of each and every provisional ballot voter in places where provisional ballots could make the difference in a close race.

Election Day Registration greatly reduces the need for provisional ballots. If a voter is not on the roll when they arrive at the polling place, they can register and vote without difficulty or challenge. Questions about eligibility can be resolved at the time of registration, rather than in the days after the election. According to the county clerk in Anoka County, Minnesota,

“[Election Day Registration] provides us with the most up-to-date information on the voter.... It assures that individuals are voting for offices and districts where

they live on Election Day and it eliminates the need for provisional ballots because we can resolve any voter registration issues that day.”²¹

Indeed, in 2004, voters in EDR states cast far fewer provisional ballots than those in non-EDR states.²²

Election Day Registration thus greatly reduces the need for provisional ballots while providing a more reliable “fail-safe” to voters and reducing the administrative burden on election workers.

2. EDR Expands Outreach by Campaigns

As a candidate myself, it was drilled into me that I was *only* to be interested in registered voters. If I was walking down the street and saw people sitting on a stoop, if their names were not on the list I carried with me, I was to ignore them. All campaign communication – mailers, phone calls, door-knocking by volunteers – was premised on ignoring those people not registered to vote. A narrowed universe was who we focused on. While such a strategy may have been efficient for the campaign, it was unhealthy for our democracy. We want a democratic process that speaks to everyone. In addition to skewing the issues of the campaign toward groups (like senior citizens) that are heavily

²¹ Electionline.org, *Election-Day Registration: A Case Study*, February 2007, at 8, available at <http://www.electionline.org/Portals/1/Publications/FINAL%20EDR%20pdf.pdf>.

²² Although most EDR states are exempt from HAVA’s provisional balloting requirement, some EDR states still choose to use provisional ballots for voters who do not have proper identification at the polls. Wisconsin, for example, recorded only 374 provisional ballots cast in 2004 while Wyoming recorded only 95 such ballots cast. See note 16.

registered, it skewed the schedule of the campaign, and the attitude of the campaign away from young voters, from new citizens, from poorer communities.

In states with Election Day Registration, all eligible citizens are potential voters up until the day of election. Candidates have to talk with everyone. In fact, one recent academic study showed that individuals were more likely to be contacted by a political party in EDR states than in non-EDR states and that those contacted in an EDR state were more likely to actually turn out and vote than those contacted in a non-EDR state.²³ EDR offers clear benefits in this respect.

The Arguments Against Election Day Registration

There are a handful of arguments that are most often used in opposition to Election Day Registration, as well as other policies that would broaden participation. Demos has done extensive research on the arguments over the past several years and I would like to take this opportunity to present some of our findings.

A. Administrative Complications at the Polls

²³ Fitzgerald, Mary. "The Triggering Effects of Election Day Registration on Partisan Mobilization Activities in U.S. Elections," Paper presented at the Annual Meeting of the American Political Science Association, Washington, DC August 31-September 3, 2005, available at http://convention2.allacademic.com/getfile.php?file=apsa05_proceeding/2005-08-29/41525/apsa05_proceeding_41525.pdf.

Some people, particularly election clerks or registrars of voters in non-EDR states, have raised the potential that EDR might cause real administrative complications at the polls. Demos recently completed a survey of election officials in EDR states and found that all six EDR states included in the survey were able to handle registrations on Election Day without disrupting the voting process.²⁴ The small minority of those surveyed who mentioned the potential for complications were quick to add that such challenges are more than outweighed by the benefit to voters.

It is certainly true that to implement EDR successfully, preparation, voter education, and staff training are essential. The most common and effective mechanism reported by election administrators is to designate a separate area of the polling place for those registering on Election Day, allowing pre-registered voters to avoid unnecessary lines. Most election officials assign a “greeter” at each polling place to direct voters to the appropriate area depending on whether they are already registered or seek to register at the polling place. Educational efforts to inform the electorate of the EDR process prior to Election Day utilizing television, radio, and billboards, along with a poll worker training program that ensures all poll workers are fully versed in state registration and voting regulations also contribute to an effective and efficient voting experience.²⁵

²⁴ See Demos, *Election Day Registration: A Ground Level View* (forthcoming November 2007), available at <http://www.demos.org>. Demos initiated a survey of 49 election officials in Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming over several months in 2007. The survey targeted EDR’s costs, administrative burdens, and security. Targeted jurisdictions ranged in size from 520,000 to fewer than 600 residents; several had significant student populations.

²⁵ *Id.*

In fact, such polling place design and educational efforts can be a streamlining mechanism overall, since some confusion at the polls is a result of bottlenecks created by voters who come and find themselves not on the rolls.

This of course raises another issue for our overall election administration process, which is the supply of poll workers adequately trained on a variety of new tasks, from electronic voting machines to digitized poll books. We clearly need a continuously improving Election Day work force, diversely recruited, with reasonable shift lengths, adequately compensated, and properly trained. Election Day Registration can be easily handled when this is the case, but even under current circumstances, the administrative difficulties have not proven daunting.

B. The Cost of EDR

Understandably, policy makers are concerned about the potential cost of EDR. Accurate calculation of the incremental expense of EDR is difficult, largely due to inadequate record keeping and the fact that EDR costs are often embedded in state, county, and municipal budgets. Nevertheless, election officials in EDR states do not report substantially higher election administration costs because of EDR.²⁶ Where EDR election clerks in Demos' 2007 survey did identify costs associated with EDR, they mainly involved training and deployment of additional staff – including more poll workers or Election judges on Election Day and/or more clerical workers after the election to add new names to the voter rolls.

²⁶ *Id.*

It should be noted, however, that the additional expenses reported in EDR states likely replace other costs that would have incurred had the state not had EDR. For example, non-EDR states regularly hire additional clerical staff in the weeks before the election to input the surge of registrations that come in as the deadline approaches. In EDR states, this cost is simply applied to additional workers inputting data after the election, during a time that is less frenzied than the run-up to the election, allowing them to concentrate on accuracy rather than speed.

C. EDR and Voter Fraud

No one who supports Election Day Registration wants to see ballots cast by ineligible voters, and it is reasonable for Congress, for state legislatures, and the public to want reassurance that this is not the case. The fraud issue, however, is a tempest in a teapot.

All available empirical evidence suggests that claims of widespread voter fraud are largely unfounded – including in EDR states. Since the release of our pioneering study *Securing the Vote* in 2003, Demos has done considerable work on the topic of voter fraud. In *Securing the Vote*, Lorraine Minnite, a political scientist at Barnard College and now a Senior Fellow at Demos, conducted extensive research using news search engines, academic literature, government documents, congressional testimony and reports, law journal articles, and an in-depth review of some of the highest-profile cases

of real or alleged fraud and concluded that voter fraud was indeed a very rare occurrence.²⁷

More recently, Professor Minnite completed a study focusing exclusively on voter fraud in EDR states between 2002 and 2005.²⁸ Her review of nearly 4000 news accounts netted one case of confirmed voter impersonation at the polls – the type of fraud most frequently invoked by opponents of EDR. In this case, a 17-year-old New Hampshire high school student who has the same name as his father cast his father's ballot in the 2004 Republican presidential primary. A new Department of Justice initiative to aggressively combat voter fraud resulted in prosecutions in only one EDR state – Wisconsin. Of fourteen Milwaukee residents charged with double voting or voting while disfranchised due to a felony conviction, all but five cases were dismissed or the defendants exonerated. Those five were charged with felon voting – not with double voting or impersonating another voter.

There are a number of reasons for this lack of fraud in EDR states. First of all, voter fraud is a felony with substantial penalties attached in every state. Because of its seriousness, several of the Election Day Registration statutes specify priority status for investigations and prosecutions of election fraud. A voter is taking a very big risk to cast that extra vote, or cast a vote to which they are not entitled. Second, there are voter

²⁷ David Callahan and Lorraine C. Minnite, *Securing the Vote: An Analysis of Election Fraud*, Demos: A Network for Ideas & Action (2003), available at <http://www.demos.org/pub111.cfm>. For an updated version see Lorraine C. Minnite, *An Analysis of Voter Fraud in the United States*, Demos: A Network for Ideas & Action (September 2007), available at <http://www.demos.org/pub1492.cfm>.

²⁸ Lorraine C. Minnite, *Election Day Registration: A Study of Voter Fraud Allegations and Findings on Voter Roll Security*, Demos: A Network for Ideas & Action, available at <http://www.demos.org/pub1493.cfm>.

identification provisions connected to state EDR statutes. These are certainly a reasonable component of Election Day Registration, though we strongly believe that Election Day registrants should not be subjected to additional, more stringent identification requirements than other voters. In fact, current EDR states accept a broad range of documents to establish identity (Idaho is the only EDR state that requires Election Day registrants to produce a photo ID).²⁹ Third, in the particular case of non-citizens, which has been raised a number of times in these debates, the idea that people would risk deportation by attempting to cast a vote, particularly when the evidence suggests that it is extremely difficult to get non-citizens (especially immigrants without legal papers) to respond to any official notification, is a highly unlikely scenario.

The possibility of fraud – as limited as it is – is further receding due to technological advances in voting list management. HAVA mandates all states to have statewide, computerized voter lists – an innovation that many states were already moving forward with on their own. The best lists – and states are moving forward toward this goal – are lists that are accessible at the precinct level in real time. This will allow instantaneous checks on whether a voter registering at a particular place is also registered at another place, anywhere in the state. And the election official will certainly be able to see immediately if the person in front of them has voted elsewhere that day. It should also be noted, however, that computerized voting lists are not a prerequisite to secure EDR elections. In fact, states such as Minnesota, Wisconsin, and Maine have effectively administered secure elections for the past 30 years without such computerized lists, and without any widespread incidences of fraud.

²⁹ *Id.*

The Momentum of EDR:

It is particularly satisfying to note that three new states have joined the ranks of those allowing voters to register and vote on the same day in the past two years. Montana adopted EDR in 2005, Iowa adopted EDR in March of this year, and North Carolina adopted Same Day Registration at early voting sites – an important step towards EDR – this past summer. Since North Dakota does not have any statewide voter registration requirement, we now have 10 states that allow citizens to register and vote on the same day.

Momentum for the passage of EDR has been steadily growing in the states over the past several years. In addition to the three relatively new EDR states, there were legislative proposals to allow EDR in 21 other states during the 2007 legislative session alone.³⁰ In a number of these states the EDR proposal made significant progress but did not achieve final passage. In most of these states we expect that the bill will be reconsidered next session. The Massachusetts state legislature is still in session and it is possible that they will adopt an EDR proposal this year. Indeed, interest in EDR has been growing since the 2000 presidential election as state legislators looked for ways to improve the electoral process in their states. During the last seven years, proposals to allow “Same Day” or “Election Day” Registration were introduced in 34 of the remaining 43 states with

³⁰ Demos: A Network for Ideas & Action, “EDR—Legislation in State Legislatures,” as of May 2, 2007, available at http://www.demos.org/EDR/EDRworksheet_05-02-07.pdf

restrictive election registration deadlines. In addition to the new EDR states, same day registration measures were considered from coast to coast, north and south.

Not every proposal gained sufficient momentum to achieve serious legislative attention; however, the mere proliferation of these proposals is evidence that support for EDR is growing, and extends to every region of the country. Consequently, the time is right for significant national attention to this proven election reform. It would be a major step forward if Congress adopts EDR for federal elections nationwide.

In conclusion, the enactment of Election Day Registration would be a major advance toward fully inclusive and participatory elections. EDR has proven its value in seven states so far, and momentum for it is growing in many states around the country. As it has in the past, Congress can dramatically advance the election procedures utilized by the states. It would be a shame not to adopt a measure that can greatly increase participation out of concern for problems that have not been shown to exist or have been shown to be extremely manageable. The benefits to our citizens and our democracy, are extremely strong.

Thank you for the opportunity to testify this morning. I am available to answer any questions at this time, and Demos is eager to work with you going forward.